

Message

From: Ford, Mark [Ford.Mark@epa.gov]
Sent: 10/4/2018 4:51:27 PM
To: Joshua Smith [joshua.smith@sierraclub.org]
CC: Price, Lisa [Price.Lisa@epa.gov]; Donaldson, Guy [Donaldson.Guy@epa.gov]; Feldman, Michael [Feldman.Michael@epa.gov]; Huser, Jennifer [Huser.Jennifer@epa.gov]; Harrison, Ben [Harrison.Ben@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]
Subject: RE: FOIA #EPA-R6-2018-010688

Mr. Smith,

We are in receipt of your response/clarification and have started the FOIA clock as we are now processing the matter. We have sent a request to eDiscovery to do the search per your search criteria. When the eDiscovery search results are sent back to us, we will review and determine what if any results are releasable. Accordingly, as agreed, we will be producing releasable documents on a rolling basis, every 30 days.

Thanks for your cooperation,

Mark Ford
 Senior Attorney/ORC
 Superfund/FOIA

From: Joshua Smith [mailto:joshua.smith@sierraclub.org]
Sent: Monday, October 01, 2018 12:52 PM
To: Ford, Mark <Ford.Mark@epa.gov>
Cc: Price, Lisa <Price.Lisa@epa.gov>; Donaldson, Guy <Donaldson.Guy@epa.gov>; Feldman, Michael <Feldman.Michael@epa.gov>; Huser, Jennifer <Huser.Jennifer@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Ho, Nancy <Ho.Nancy@epa.gov>
Subject: Re: FOIA #EPA-R6-2018-010688

Mark,

Please see the responses below:

1. These search terms are fine:

(TX or Texas) and (RH or "Regional Haze" or BART or "trading program")

2. In an attempt to clarify and narrow the scope of the search:

We request any communications and calendar entries relating to the subject of the FOIA request above--i.e., (TX or Texas) and (RH or "Regional Haze" or BART or "trading program")--**to or from the following EPA staff:**

EPA Administrator (Pruitt or Wheeler)
 Region 6 Administrator (whoever was in that role during the period in question)
 Mandy Gunasekara
 Guy Donaldson
 Sam Coleman

Wren Stegner
 Erik Snyder
 Carl Young
 Carrie Paige
 Kenneth Wagner
 Brittany Bolen
 Kristi Smith
 Matt Marks
 Justin Schwab
 Ryan Jackson
 Samantha Davis

AND any of the outside entities (or domain names) identified below:

State of Texas
 Texas Commission on Environmental Quality
texas.gov
 Luminant Generation Company LLC
 Big Brown Power Company LLC
 Utility Air Regulatory Group
luminant.com
vistra.com
balch.com
gibsondunn.com
energyfutureholdings.com
bakerbotts.com
huntonak.com
xcelenergy.com or Southwestern Public Service Company
lewisbess.com
bradleyfirm.com
ddh-ar.com
jw.com
sidley.com
 Stephen Gidiere
 Debra Jezoit
 William Bumbers
 Derek McDonald
 Aaron Street
 Norm Fichthorn
 David Taggart
 Mark Waters
aep.com
swepco.com
dynegy.com or Coletto Creek Power
nrg.com
 cpsenergy
lcra.org
epelectric.com

Please feel free to call me if I can provide additional information.

Josh

On Thu, Sep 20, 2018 at 10:37 AM Ford, Mark <Ford.Mark@epa.gov> wrote:

Joshua,

I am still waiting on a response from you regarding my last email sent to you on Tuesday, September 18 @ 2:52pm.

This email is a follow-up from our side. The review team has pointed out the following:

Our Region 6 FOIA Officer, Nancy Ho, has an email wherein you confirmed the search terms used in the previous search as being acceptable. From an Agency resource perspective, the search terms do in fact encompass the request, however, it returns a significant number of documents that are not related to Texas Regional Haze, and therefore are not responsive. The extra burden on staff to review these extraneous documents just prolongs the FOIA process unnecessarily.

To this point, we would propose the following as the search terms:

1. (TX or Texas) and (RH or "Regional Haze" or BART or "trading program")

Will you also agree that you do not want access to non-responsive materials? In this situation, we can potentially receive numerous hits on document that are non-responsive but legally we have to review them and provide them as "Non-responsive" is not a basis for withholding or an Exemption under FOIA. Your agreeing to this will help us to get you responses quicker.

Please "reply to all" when you respond. I need to know if you agree with the search terms as identified in #1 as well as if you agree to not wanting access to Non-responsive materials/documents.

Many thanks,

Mark Ford

Senior Attorney/ORC

Superfund/FOIA

From: Joshua Smith [mailto:joshua.smith@sierraclub.org]
 Sent: Tuesday, September 18, 2018 1:49 PM
 To: Ford, Mark <Ford.Mark@epa.gov>
 Cc: Price, Lisa <Price.Lisa@epa.gov>; Donaldson, Guy <Donaldson.Guy@epa.gov>; Feldman, Michael <Feldman.Michael@epa.gov>; Huser, Jennifer <Huser.Jennifer@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Ho, Nancy <Ho.Nancy@epa.gov>
 Subject: Re: FOIA #EPA-R6-2018-010688

Mark,

Thanks for following up. And thanks for your patience while we reviewed. Please see below for responses.
 Thanks, Josh

As discussed today, you:

1. Agreed to rolling responses but wanted to check with your colleague(s) if the standard "every 30 days" would suffice. As I explained, our rolling response system is designed to release responsive releasable documents to the Requestor no later than 30th day OR before. It is not our practice to delay or hold onto documents until the 30th day. Agreed.
2. Agreed to the date time frame of your FOIA being October 19, 2017 to August 17, 2018; Agreed
3. Agreed that you want us to search for the position Administrator as well as you want us to also search for the person in the Administrator position during the requested time period October 19, 2017 to August 17, 2018; Yes, but please include the Regional Administrator (or the person who was serving in this position) in this search.
4. Will provide clarification regarding either the position(s) and/or name the of the person(s) in the Office of the Administrator as it relates to paragraph #2 in your FOIA;
5. Will provide clarification regarding either the position(s) and/or name the of the person(s) in Region 6 as it relates to paragraph #2 in your FOIA. We would like to prioritize communications, relating to the subject of the FOIA request, *to or from the following EPA staff and the outside entities* identified in our request: Mandy Gunasekara, Guy Donaldson, Sam Coleman, Wren Stegner, Erik Snyder, Carl Young, Carrie Paige.

On Thu, Sep 13, 2018 at 2:07 PM, Ford, Mark <Ford.Mark@epa.gov> wrote:

Mr. Smith,

As I indicated in our telephone discussion with you today, I am an Attorney in the Office of Regional Counsel, EPA, Region 6, Dallas, TX office. I am assisting with your FOIA which is identified in the above Subject line.

As discussed today, you:

1. Agreed to rolling responses but wanted to check with your colleague(s) if the standard "every 30 days" would suffice. As I explained, our rolling response system is designed to release responsive releasable documents to the Requestor no later than 30th day OR before. It is not our practice to delay or hold onto documents until the 30th day.
2. Agreed to the date time frame of your FOIA being October 19, 2017 to August 17, 2018;
3. Agreed that you want us to search for the position Administrator as well as you want us to also search for the person in the Administrator position during the requested time period October 19, 2017 to August 17, 2018;
4. Will provide clarification regarding either the position(s) and/or name the of the person(s) in the Office of the Administrator as it relates to paragraph #2 in your FOIA;
5. Will provide clarification regarding either the position(s) and/or name the of the person(s) in Region 6 as it relates to paragraph #2 in your FOIA.

Please "Reply to All" when responding. Your FOIA will be placed on hold until we receive the above clarifications from you.

I appreciate your response and look forward to working with you.

Many thanks,

Mark Ford

Senior Attorney/ORC

Superfund/FOIA

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Joshua Smith

Senior Staff Attorney

Sierra Club Environmental Law Program

2101 Webster St., Suite 1300

Oakland, CA 94612

(415)977-5560

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Joshua Smith

Senior Staff Attorney

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